

SENATE BILL 212

N1

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By: **Senator Mooney**

Introduced and read first time: January 21, 2010

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Residential Property – Prohibited Restrictions on Exercise of Free Speech**

3 FOR the purpose of providing that, except under certain circumstances, homeowners
4 in a common ownership community and residential tenants may not be
5 prohibited from displaying certain noncommercial signs, posters, flags, or
6 banners on their premises, peacefully assembling on their property or
7 contacting their neighbors, engaging in constitutionally protected activity
8 relating to an election or vote held by their community association or a certain
9 government entity with jurisdiction over the common ownership community or
10 the residential premises, or be restricted from using common property based on
11 protected beliefs, expression, or activities; authorizing certain restrictions for
12 the protection of public health or safety or if the posting or display of certain
13 signs, posters, flags, or banners or other activity would violate federal, State, or
14 local law; providing that, except under certain circumstances, the terms of a
15 contract, deed, covenant, bylaw, or other similar governing document of a
16 common ownership community or a lease agreement may not prohibit or restrict
17 a homeowner in the common ownership community or a residential tenant from
18 displaying certain noncommercial signs, posters, flags, or banners on the
19 premises of a homeowner or tenant, peacefully assembling on the homeowner's
20 or tenant's property or contacting neighbors, engaging in constitutionally
21 protected activity relating to an election or vote held by the community
22 association or a certain government entity with jurisdiction over the common
23 ownership community or the residential premises, or using common property
24 based on constitutionally protected beliefs, expression, or activities; authorizing
25 certain restrictions in the terms of a certain document for the protection of
26 public health or safety or if the posting or display of certain signs, posters, flags,
27 or banners or other activity would violate federal, State, or local law;
28 authorizing the governing body of a condominium, homeowners association, or
29 housing cooperative, or a landlord to adopt reasonable rules regarding
30 noncommercial signs, posters, flags, or banners or the exercise of protected
31 activity; stating the intent of the General Assembly; requiring attorney's fees

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 and costs to be awarded to a party who prevails in an action under this section;
 2 repealing certain provisions of law relating to restrictions on certain political
 3 signs; and generally relating to the exercise of free speech on residential
 4 property in certain common ownership communities and certain residential
 5 rental property.

6 BY repealing

7 Article – Real Property

8 Section 11B–111.2

9 Annotated Code of Maryland

10 (2003 Replacement Volume and 2009 Supplement)

11 BY repealing and reenacting, with amendments,

12 Article – Real Property

13 Section 14–128

14 Annotated Code of Maryland

15 (2003 Replacement Volume and 2009 Supplement)

16 BY renumbering

17 Article – Real Property

18 Section 11B–111.3 through 11B–111.6, respectively

19 to be Section 11B–111.2 through 11B–111.5, respectively

20 Annotated Code of Maryland

21 (2003 Replacement Volume and 2009 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 23 MARYLAND, That the Laws of Maryland read as follows:

24 **Article – Real Property**

25 [11B–111.2.

26 (a) In this section, “candidate sign” means a sign on behalf of a candidate for
 27 public office or a slate of candidates for public office.

28 (b) Except as provided in subsection (c) of this section, a recorded covenant or
 29 restriction, a provision in a declaration, or a provision in the bylaws or rules of a
 30 homeowners association may not restrict or prohibit the display of:

31 (1) A candidate sign; or

32 (2) A sign that advertises the support or defeat of any question
 33 submitted to the voters in accordance with the Election Law Article.

34 (c) A recorded covenant or restriction, a provision in a declaration, or a
 35 provision in the bylaws or rules of a homeowners association may restrict the display
 36 of a candidate sign or a sign that advertises the support or defeat of any proposition:

- 1 (1) In the common areas;
- 2 (2) In accordance with provisions of federal, State, and local law; or
- 3 (3) If a limitation to the time period during which signs may be
4 displayed is not specified by a law of the jurisdiction in which the homeowners
5 association is located, to a time period not less than:
- 6 (i) 30 days before the primary election, general election, or vote
7 on the proposition; and
- 8 (ii) 7 days after the primary election, general election, or vote on
9 the proposition.]

10 14–128.

11 (a) The provisions of this section shall apply to any residential property,
12 including property that is subject to the provisions of:

- 13 (1) Title 8, Title 8A, Title 11, Title 11A, or Title 11B of this article; or
- 14 (2) Title 5, Subtitle 6B of the Corporations and Associations Article.

15 **(B) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT:**

16 **(1) HOMEOWNERS AND TENANTS THROUGHOUT THE STATE**
17 **SHALL BE ABLE TO ENGAGE IN FREE SPEECH ACTIVITIES THAT WOULD BE**
18 **CONSTITUTIONALLY PROTECTED IF DONE ON PRIVATE RESIDENTIAL**
19 **PROPERTY;**

20 **(2) OWNERS OF A SEPARATE INTEREST IN A COMMON OWNERSHIP**
21 **COMMUNITY AND RESIDENTIAL TENANTS SHALL BE SPECIFICALLY PROTECTED**
22 **FROM UNREASONABLE RESTRICTIONS ON THIS RIGHT TO EXPRESSION IN THE**
23 **COMMON OWNERSHIP COMMUNITY’S GOVERNING DOCUMENTS OR IN LEASE**
24 **AGREEMENTS; AND**

25 **(3) REASONABLE RESTRICTIONS ON PROTECTED EXPRESSION**
26 **SHALL BE CONTENT- AND VIEWPOINT-NEUTRAL.**

27 **[(b)] (C) [Regardless of the terms of any contract, deed, covenant,**
28 **restriction, instrument, declaration, rule, bylaw, lease agreement, rental agreement,**
29 **or any other document concerning the display of flags or decorations by a homeowner**
30 **or tenant on residential property,] SUBJECT TO REASONABLE RULES ADOPTED**
31 **UNDER SUBSECTION (E) OF THIS SECTION, AND EXCEPT AS REQUIRED FOR THE**
32 **PROTECTION OF PUBLIC HEALTH OR SAFETY OR IF THE POSTING, DISPLAY, OR**

1 **OTHER ACTIVITY WOULD VIOLATE FEDERAL, STATE, OR LOCAL LAW, a**
 2 **homeowner or tenant [may]:**

3 **(1) MAY not be prohibited from displaying on the premises of the**
 4 **property in which the homeowner or tenant is entitled to reside [one]:**

5 **(I) A portable, removable flag of the United States in a**
 6 **respectful manner, consistent with 4 U.S.C. §§ 4 through 10, as amended[, and subject**
 7 **to reasonable rules and regulations adopted pursuant to subsection (d) of this section];**
 8 **OR**

9 **(II) NONCOMMERCIAL SIGNS, POSTERS, FLAGS, OR**
 10 **BANNERS;**

11 **(2) MAY NOT BE PROHIBITED FROM PEACEFULLY:**

12 **(I) ASSEMBLING ON THE HOMEOWNER'S OR TENANT'S**
 13 **PROPERTY; OR**

14 **(II) VISITING, TELEPHONING, PETITIONING, OR OTHERWISE**
 15 **CONTACTING THE HOMEOWNER'S OR TENANT'S NEIGHBORS;**

16 **(3) MAY NOT BE PROHIBITED FROM ENGAGING IN LAWFUL**
 17 **ACTIVITIES RELATING TO AN ELECTION OR VOTE HELD BY THE COMMUNITY**
 18 **ASSOCIATION OR ANY GOVERNMENT OR QUASI-GOVERNMENT ENTITY WITH**
 19 **GEOGRAPHIC JURISDICTION OVERLAPPING ANY PART OF THE COMMON**
 20 **OWNERSHIP COMMUNITY OR THE PREMISES OF THE RESIDENTIAL TENANT; OR**

21 **(4) WHERE COMMON PROPERTY IS MADE AVAILABLE FOR USE BY**
 22 **HOMEOWNERS OR TENANTS, MAY NOT HAVE ACCESS TO THE PROPERTY**
 23 **RESTRICTED BASED ON PROTECTED BELIEFS, EXPRESSION, OR ACTIVITIES.**

24 **[(c)] (D) [The] SUBJECT TO REASONABLE RULES ADOPTED UNDER**
 25 **SUBSECTION (E) OF THIS SECTION, AND EXCEPT AS REQUIRED FOR THE**
 26 **PROTECTION OF PUBLIC HEALTH OR SAFETY OR IF THE POSTING, DISPLAY, OR**
 27 **OTHER ACTIVITY WOULD VIOLATE FEDERAL, STATE, OR LOCAL LAW, THE terms**
 28 **of any contract, deed, covenant, restriction, instrument, declaration, rule, bylaw, lease**
 29 **agreement, rental agreement, or any other document concerning the display of flags or**
 30 **decorations OR EXERCISE OF PROTECTED EXPRESSION by a homeowner or tenant**
 31 **on residential property [may]:**

32 **(1) MAY not prohibit or unduly restrict the right of a homeowner or**
 33 **tenant to display on the premises of the property in which the homeowner or tenant is**
 34 **entitled to reside [one]:**

1 **(I)** A portable, removable flag of the United States in a
2 respectful manner, consistent with 4 U.S.C. §§ 4 through 10, as amended[, and subject
3 to reasonable rules and regulations adopted under subsection (d) of this section]; **OR**

4 **(II) NONCOMMERCIAL SIGNS, POSTERS, FLAGS, OR**
5 **BANNERS;**

6 **(2) MAY NOT PROHIBIT A HOMEOWNER OR TENANT FROM**
7 **PEACEFULLY:**

8 **(I) ASSEMBLING ON THE HOMEOWNER’S OR TENANT’S**
9 **PROPERTY; OR**

10 **(II) VISITING, TELEPHONING, PETITIONING, OR OTHERWISE**
11 **CONTACTING THE HOMEOWNER’S OR TENANT’S NEIGHBORS;**

12 **(3) MAY NOT UNREASONABLY RESTRICT LAWFUL ACTIVITIES**
13 **RELATING TO AN ELECTION OR VOTE HELD BY THE COMMUNITY ASSOCIATION**
14 **OR ANY GOVERNMENT OR QUASI-GOVERNMENT ENTITY WITH GEOGRAPHIC**
15 **JURISDICTION OVERLAPPING ANY PART OF THE COMMON OWNERSHIP**
16 **COMMUNITY OR THE PREMISES OF THE RESIDENTIAL TENANT; OR**

17 **(4) WHERE COMMON PROPERTY IS MADE AVAILABLE FOR USE BY**
18 **HOMEOWNERS OR TENANTS, MAY NOT RESTRICT ACCESS TO THE PROPERTY**
19 **BASED ON PROTECTED BELIEFS, EXPRESSION, OR ACTIVITIES.**

20 **[(d)] (E)** (1) Subject to paragraph (2) of this subsection, the board of
21 directors of a condominium, homeowners association, or housing cooperative, or a
22 landlord may adopt reasonable rules and regulations regarding the placement and
23 manner of display of the flag of the United States and a flagpole used to display the
24 flag of the United States **OR NONCOMMERCIAL SIGNS, POSTERS, FLAGS, OR**
25 **BANNERS OR THE EXERCISE OF PROTECTED EXPRESSION** on the premises of the
26 property in which the homeowner or tenant is entitled to reside.

27 (2) Before adopting any rules or regulations under paragraph (1) of
28 this subsection, the board of directors of the condominium, homeowners association, or
29 housing cooperative, or the landlord shall:

30 (i) Hold an open meeting on the proposed rules and regulations
31 for the purpose of providing affected homeowners and tenants an opportunity to be
32 heard; and

33 (ii) Provide advance notice of the time and place of the open
34 meeting by publishing the notice in a community newsletter, on a community bulletin

1 board, by means provided in the documents governing the condominium, homeowners
2 association, or housing cooperative, or in the lease, or by other means reasonably
3 calculated to inform the affected homeowners and tenants.

4 **(F) A PARTY WHO PREVAILS IN AN ACTION TO ENFORCE THIS SECTION**
5 **SHALL BE AWARDED REASONABLE ATTORNEY'S FEES AND COSTS.**

6 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 11B-111.3
7 through 11B-111.6, respectively, of Article – Real Property of the Annotated Code of
8 Maryland be renumbered to be Section(s) 11B-111.2 through 11B-111.5, respectively.

9 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2010.